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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3495 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.

[illegible]

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

M A SHAIKH

Appearance:

MRS VASAVDATTA BHATT for Petitioner

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 15/07/98

ORAL JUDGEMENT

Gujarat State Road Transport Corporation(GSRTC)

has filed the present petition to challenge the award passed in Reference GSRTC of 1994 by the Labour Court, Godhra on 24.2.97.

2. Respondent M.A. Shaikh was working as a driver with the present petitioner and he was attached to Godhra depot. He had remained absent from his duties between 1.5.92 and 22.5.1992. When he reported for duties on 23.9.92 he had produced a medical certificate of the medical officer approved by the petitioner to show that during the said period he was ill and he was under the treatment of the said medical officer. In spite of this, as he had not obtained leave in advance, the department decided to proceed against him with the department inquiry. In the departmental inquiry, it was found that he has remained absent without prior permission or leave between 1.5.92 and 22.5.92. After recording such a finding, the inquiry officer submitted his report to the disciplinary authority and the disciplinary authority was pleased to pass an order dismissing the respondent from service on 10.8.93. Therefore, the respondent raised an industrial dispute. Said industrial dispute resulted into reference GSRTC of 1994. Said Reference came up for hearing before the Labour Court, Godhra. The Labour Court found that though the respondent had committed misconduct of remaining absent from duties without prior permission, the punishment of dismissal from service was not justified at all. The Labour Court therefore interfered with the awarding of punishment of dismissal from service and directed the petitioner to reinstate the respondent with 25 percent back wages. Against the said award, present petition is filed.

3. Ms. Vasavadatta Bhatt learned advocate appearing for the petitioner very vehemently urged before me that there was no justification for the Labour Court to interfere with the order of punishment. She submitted that the discipline must be maintained in the establishment and such absence from duties without prior permission should not be lightly considered. She also submitted that awarding of 25 percent back wages to the workman was not also justified and instead of punishing him, it would amount to giving him premium of his misconduct. There should not be any dispute that there must be discipline in service but at the same time it could not be said that for the purpose of maintaining discipline in the establishment, the order of dismissal passed against the respondent was justified. Admittedly, the workman when resumed his duties on 23.5.91, produced a medical certificate of the approved medical officer of

the petitioner to show that during the period of his absence he was in fact sick and was under his treatment. Therefore, when he had produced such a certificate, the disciplinary authority who is authorised to take action against the delinquent, ought to have taken into consideration this aspect and ought to have thought over for taking appropriate disciplinary action by way of awarding proper punishment to him looking to the misconduct committed by him. Ms. Bhatt urged before me that the delinquent-respondent had not obtained prior permission and his subsequent producing of medical certificate could not be of any help for ignoring his misconduct. Had the delinquent obtained prior permission, there was no question of committing any misconduct. The misconduct has arisen because he had not obtained prior permission. There is no dispute that he has committed misconduct of not intimating his superiors about this illness before 23.5.1992. But that does not justify the action taken by the disciplinary authority of dismissing the delinquent respondent from service. When he produced medical certificate of authorised medical officer, the disciplinary authority ought to have taken into consideration of the same and ought to have accordingly awarded the punishment. The Labour Court was justified in holding that punishment of dismissal was not justified. Said finding recorded by the Labour Court could not be said to be either grossly erroneous or perverse so as to interfere with the same by exercising extra ordinary powers under Articles 226/227 of the Constitution of India.

4. Ms. Bhatt further urged before me that during the absence of the delinquent-respondent the GSRTC had to engage another driver and for that driver by giving over time to the said driver and said driver was to be paid overtime allowance accordingly. She further submitted that after the dismissal of the respondent, the GSRTC had to engage another full time driver and he was also to be paid. therefore, in the circumstances, there was no justification in awarding him back wages of 25 percent. The reinstatement of respondent has taken place on account of grossly disproportionate punishment awarded to the delinquent-respondent. It is expected of the disciplinary authority to take into consideration the view of this court as well as the Apex Court. The Apex Court as well as this Court have repeatedly laid down that mere absence from duties could not be a ground for dismissing a workman from service. When such orders are passed in a proceeding to which present petitioner is a party, the petitioner corporation ought to have taken into consideration the views expressed by the courts in

such matters and ought to have awarded appropriate punishment to the delinquent looking to the gravity of the misconduct committed by the delinquent. As a matter of fact it is expected of the petitioner to take action against the disciplinary authority who does not take into consideration the views of the Apex Court as well as this Court in such matters. In the instant case, the respondent delinquent had reasonable cause for his absence. Therefore, the action taken by the disciplinary authority was not justified and proper. Therefore, if at all any financial loss is caused to the GSRTC it is because of the lapse on the part of said disciplinary authority. If at all the GSRTC wants to take any action, for causing any financial loss to the GSRTC that action deserves to be taken against the disciplinary authority. When a workman is wrongly dismissed from service and when he is deprived of his wages, the normal rule would be to reinstate the workman with full back wages. But in the instant case the Labour Court has deprived him of 75 percent wages. That 75 percent is for a period of more than two years. Therefore, 75 percent wages would be taken into consideration when the GSRTC is considering its loss. In this case, the loss if at all caused has arisen because of the improper orders passed by the disciplinary authority and not on account of any illegality committed by the delinquent respondent. Therefore, the order passed by the Labour Court in directing reinstatement of the respondent workman could not be said to be either perverse or grossly erroneous so as to interfere with the same in exercise of the extraordinary powers under Articles 226/227 of the Constitution of India. In the circumstances, the petition deserves to be summarily rejected. The petition is rejected summarily. No costs.

(S.D.Pandit.J)